

STATE OF MARYLAND

**MARYLAND DEPARTMENT OF THE ENVIRONMENT**

**Shari T. Wilson, Secretary**

**BILL NO: SB 120**

**COMMITTEE: Education, Health, and Environmental Affairs**

**POSITION: Oppose**

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**TITLE: Environment – Permit Process - Modifications**

**BILL ANALYSIS:** This bill: 1) would amend Section 1-601 of the Environment Article to require MDE to offer an opportunity for a contested case hearing for all permits issued by the Department beyond the hearings currently required in 1-601(a) of the Environment Article; 2) would require that public informational meetings and public hearings that are held concerning permit actions be advertised and held within the postal zip code in which the permitted site is or would be located; 3) would establish an Environmental Leadership Group composed of 24 citizens from each of the local governments, MDE and EPA to consider and act on environmental matters referred by the Secretary, including activities that require permit approval from local, State, and federal government agencies and; 4 ) would require that for certain kinds of air management permits, an environmental impact statement in conformance with the requirements of COMAR2 6.03.11.09 be submitted.

**POSITION AND RATIONALE:** Oppose

Contested Case Hearings

Most major permit issuances such as landfills, incinerators, sludge storage facilities, and discharge permits are already subject to public meeting and hearing requirements, and require that the Department offer an opportunity for appeal once the administrative decision has been reached. This bill would significantly increase the potential number of contested case hearings by several hundred in the waste and air permitting areas. The Department believes that current requirements for contested case hearings which have been developed by subject area combined with the informational meetings are adequately addressing issues.

This bill would also affect many smaller permits that are necessary for routine construction and other commercial and residential activities Statewide.

The Department anticipates that meeting the requirements of the bill would require 9 FTEs (including three new attorneys) to provide support from the Office of the Attorney General, and approximately \$200,000 per year in other costs, primarily legal notices (approximately \$500 per case), and other miscellaneous costs. The new employees to handle the new workload would include Public Health Engineers, a geologist, and additional office support.

If the Department were required to provide the opportunity for a contested case hearing for all permits, the workload of the Department would increase dramatically. Limited technical expertise would be redirected to defending challenges and away from critical technical reviews. The proposed expanded challenges would also lengthen permit turnaround times.

#### Environmental Leadership Group

At one time, in the 1980s we understand there was a similar Leadership Group that was helpful at that time. Today, the sophistication and specialization of advocacy groups has increased dramatically and the Department believes that the specialized expertise afforded by these groups more effectively informs the Department than a broad Environmental Leadership Group.

#### Environmental Impact Statement

The Bill requires an applicant for a permit to construct shall prepare and submit an environmental impact statement to the Department. However, the Bill also states that "The Environmental Impact Statement shall be prepared, submitted and approved in accordance with the procedural requirements set forth in COMAR 26.03.11.09." COMAR 26.03.11.09 does not automatically require an environmental impact statement for every project; instead, it states the following: "Criteria for Initiating Environmental Impact Statements. If the Department determines, after the environmental review, that significant environmental impacts may occur and cannot be adequately mitigated or that any of the conditions set forth in 40 CFR §6.108(a)-(g) and 6.509 exist, the applicant shall prepare a draft EIS and shall submit it to the Department for preliminary approval." The Bill would generally create two major resource impacts of concern. First, it would increase and redirect staff to prepare announcements, track appeals, and defend permit decisions in appeal hearings in order to comply with the bill would significantly impact Departmental permit operations, including those where fees would have to be returned to applicants for tardy reviews. Second, this requirement would significantly increase the legal workload and has the potential to divert resources from enforcement and compliance efforts which are already short staffed.

**FOR MORE INFORMATION,**  
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